

ORDINANCE NO. 10-44

ORDINANCE OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, AMENDING CHAPTER 6, ALCOHOLIC BEVERAGES, ARTICLE III REGULATIONS, AND IN PARTICULAR, REVISING HIALEAH CODE § 6-66 ENTITLED "DISTANCE SEPARATION REQUIREMENTS; RESTRICTIONS" TO CHANGE LICENSE NUMBERS TO CONFORM TO THE CURRENT NORTH AMERICAN INDUSTRIAL CLASSIFICATION SYSTEM RECENTLY ADOPTED BY THE CITY; TO INCLUDE 1 COP (BEER ONLY WITH FOOD) LICENSE FOR RESTAURANTS; AND TO PROVIDE FOR RESTAURANTS SELLING ALCOHOLIC BEVERAGES WITH FULL-SERVICE OPERATING KITCHENS EXCEEDING 500 SQUARE FEET TO PROVIDE NO LESS THAN 700 SQUARE FEET IN SERVICE OR SEATING AREA, IN LIEU OF THE 850 SQUARE-FOOT MINIMUM SERVICE AREA AND AMENDING CHAPTER 86 ENTITLED "TAXATION AND FEES", ARTICLE II. LOCAL BUSINESS TAX, OF THE CODE OF ORDINANCES BY REVISING HIALEAH CODE § 86-43 ENTITLED "SCHEDULE OF TAX BY BUSINESS CLASSIFICATION" TO PROVIDE LANGUAGE THAT CORRESPONDS WITH THE FOREGOING CHANGES TO ALCOHOLIC BEVERAGE CHAPTER; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING PENALTIES FOR VIOLATION HEREOF; PROVIDING FOR INCLUSION IN CODE; PROVIDING FOR A SEVERABILITY CLAUSE AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, this ordinance is intended in general to benefit the health, safety, public welfare and proper administration of the government of the City and its residents; and

WHEREAS, the specific purposes of this ordinance are three-fold: (1) to update language to reflect the new business tax receipts (license) classifications in the alcoholic beverage section of the Hialeah Code; (2) to include 1-COP license for restaurants to sell

beer only with meals that is allowed by the State of Florida, but not provided in the Hialeah Code; and (3) to provide a reduction from a minimum of 850 square feet for service or seating area for restaurant to sell alcoholic beverages to 700 square feet provided, however, that the same restaurant also operates a full-service kitchen having more than 500 square feet in total area.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

Section 1: Chapter 6 entitled "Alcoholic Beverages", Article III. Regulations, of the Code of Ordinances of the City of Hialeah, Florida, by revising Hialeah Code § 6-66 entitled "Distance separation requirements; restrictions", is hereby amended to read as follows:

Chapter 6

ALCOHOLIC BEVERAGES

* * *

ARTICLE III. REGULATIONS.

* * *

Sec. 6-66. Distance separation requirements; restrictions.

(a) The distance separation requirements of alcoholic beverage establishments from churches, schools, city parks and recreational areas, residential uses and similar uses shall be as follows:

			Distances (in linear feet)			
License Type (SIC No.) Series (NAICS)	Type of Establishment	Zoning	School, Church	Other Similar Use	Residential, Parks	State License Required

5812 — <u>722110</u> <u>722110A</u>	Restaurant	C-1, C-2, C-3 CR, CBD	No distance requirement			<u>1-COP</u> 2-COP, 4-COP- SRX
5813 — <u>722410</u>	Bars	C-3	500	500	500	2 COP, 4 COP
5813-A — <u>722410A</u>	Nightclubs	C-3	1,000	1,000	500	4 COP
7911-B — <u>722320B</u>	Banquet halls providing beer, wine or alcoholic beverages as part of event	C-2, C3, CBD	No distance requirement			2 COP, 4 COP- SRX if required 4 COP
5921 — <u>445310</u>	Liquor stores selling alcoholic beverages (excluding stores selling beer and/or wine only)		None	1,000	None	3PS

(b) Restaurants, holding a ~~5812~~ 722110A series occupational license, shall not sell, offer for sale, deliver or serve alcoholic beverages, wine, and beer for consumption or use on the premises, except as follows:

(1) For the sale and/or on-premises consumption of wine and/or beer, the holder of a ~~5812~~ 722110A series occupational license to operate the restaurant (referred to as the "licensee") must obtain a state 1-COP or 2-COP license and comply with the following:

a. The sale of beer and/or wine must be incidental to the sale and consumption of food. The restaurant must derive at least 51 percent of its gross revenue from the sale of food and nonalcoholic beverages. The required percentage must be maintained on a daily basis. The restaurant operator shall not deflate the price of beer and wine or inflate the price of the served meal from what would be the regular price for the beer, wine, or meal served by a similar establishment in the city as a means or method of meeting the minimum required percentage of gross revenue required by this subpart.

b. Records of all purchases and gross sales of food and non-alcoholic beverages must be maintained separately from records of all purchases and gross sales of beer and wine.

c. The records must be clear and legible and must be kept on the premises. The restaurant operator must immediately comply with any requests by the city to audit or inspect the records for purposes of verifying compliance with the required gross revenue percentage.

d. No beer or wine shall be sold between the hours of 1:00 a.m. and 8:00 a.m. on any day of the week. Under no circumstance shall beer or wine be sold after the hours of serving food have elapsed.

e. The restaurant must serve full-course meals prepared, served and sold daily for immediate consumption on the premises at any time when open for business, from a kitchen or facility inspected and approved by the division of hotels and restaurants of the state department of business and professional regulation or the state department of agriculture and consumer services. Full kitchen facilities shall mean facilities containing commercial grade burners, ovens, range hoods and refrigeration units of such size and capacity to accommodate the seating of the restaurant. Meals prepared off the premises, snacks, prepackaged foods or sandwiches will not be considered full-course meals for purposes of this subsection.

f. The restaurant must be equipped to serve 30 people full-course meals at tables, having 30 chairs, excluding barstools or counter stools.

g. The restaurant must have written menus readily available to patrons. A majority of the food listed in the menu shall be available for consumption while the business is open.

h. The restaurant must have more than 850 square feet of service area or a combination of a full-service operating kitchen area larger than 500 square feet with a service area of no less than 700 square feet.

i. The restaurant operator shall not circumvent the intent of this subsection by an artifice or scheme.

j. There shall be compliance with this Code, including but not limited to requirements of article V of chapter 18 and article II of chapter 86.

k. The restaurant operator shall not employ B-girls, waitresses, or hostesses as companions to male customers or otherwise to entice, encourage or lure male customers to purchase multiple drinks by sitting at the table or other seating area with male customers with conversation, touching, sexual innuendo or the promise of sexual favors or attention.

(2) For sale and/or on-premises consumption of alcoholic beverages, the ~~5812~~ 722110A series licensee must obtain a state 4-COP-SRX license and must comply with the following.

*

*

*

Section 2: Chapter 86 entitled “Taxation and Fees”, Article II. Local Business Tax, of the Code of Ordinance of the City of Hialeah, Florida, by revising Hialeah Code § 86-43 entitled “Schedule of tax by business classification”, is hereby amended to read as follows:

Sec. 86-43. Schedule of tax by business classification.

Subsector 722	Food Services and Drinking Places	
	722110. Single unit restaurants* (with seating) having less than or equal to 850 square feet of service area. No beer, wine or alcoholic beverages sold, offered for sale, delivered or served, <u>except for establishments having a combination of a full-service operating kitchen area larger than 500 square feet with a service area of no less than 700 square feet .</u>	75.00
	722110A. Single unit restaurants*** (with seating) having more than 850 square feet of service area	75.00

*

*

*

Section 3: Repeal of Ordinances in Conflict.

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 4: Penalties.

Every person violating any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be assessed a civil penalty not to

exceed \$500.00 within the discretion of the court or administrative tribunal having jurisdiction. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. In addition to the penalty prescribed above, the City may pursue other remedies such as abatement of nuisance, injunctive relief, administrative adjudication and revocation of licenses or permits.

Section 5: Inclusion in Code.

The provisions of this ordinance shall be included and incorporated in the Code of Ordinances of the City of Hialeah, as an addition or amendment thereto, and the sections of this ordinance shall be renumbered to conform to the uniform numbering system of the Code.

Section 6: Severability Clause.

If any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

Section 7: Effective Date.

This ordinance shall become effective when passed by the City Council and signed by the Mayor or at the next regularly scheduled City Council meeting, if the

(THIS SPACE IS LEFT INTENTIONALLY BLANK.)

Mayor's signature is withheld or if the City Council overrides the Mayor's veto.

PASSED AND ADOPTED this 13th day of July, 2010.

THE FOREGOING ORDINANCE
OF THE CITY OF HIALEAH WAS
PUBLISHED IN ACCORDANCE
WITH THE PROVISIONS OF
FLORIDA STATUTE 186.041

Attest: ~~PRIOR TO FINAL READING.~~ Approved on this 15 day of July, 2010.


Rafael E. Granado, City Clerk


Carlos Hernandez
Council President


Mayor Julio Robaina

Approved as to form and legal sufficiency:


William M. Grodnick, City Attorney

~~Strikethrough~~ indicates deletion. Underline indicates addition.

S:\WMG\LEGISLATION\ORD\Ordinance 2010\ch6amndrestaurantsalcoholicbev.docx

Ordinance was adopted by a unanimous vote with Councilmembers, Caragol, Casals-Muñoz, Cue, Garcia-Martinez, Gonzalez, Hernandez, and Yedra voting "Yes."